IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 63 OF 2006

Mr. Sertorio S. Facho
House No. C-1/32
Near Head Post Office
D. Joao de Castro Road,
Panjim. ..... Petitioner

V e r s u s

1. Dr. Fernando Jorge Colaso
   Advocate & Notary
   104, 1st Floor, Manguirich Chambers,
   18th June Road, Panjim.

2. State of Goa,
   Through Public Prosecutor,
   Panjim. ..... Respondents

Petitioner in person.
Ms. Tereza Colaso, Advocate for Respondent no.1.
Ms. Winnie Coutinho, Public Prosecutor for the State/Respondent no.2.

CORAM: N. A. BRITTO, J.

DATE: 15th March, 2007.

ORAL JUDGMENT

This revision is filed by the Complainant in C.C. no. 105/04, against the Order dated 18.11.2006, by which the learned Additional Sessions Judge-I, FTC, Panaji, has quashed the process issued against the accused under Section 499/500 IPC.

2. The parties hereto shall be referred to in the names as they appear in the cause title of the said complaint.

3. Some facts are required to be stated to dispose of the present revision.

4. The Complainant had filed a Civil Suit bearing no. 168/96/B against the accused in which the accused as defendant had raised a counter claim against the Complainant as plaintiff for damages for defamation and the said counter claim came to be allowed by Judgment dated 30.11.2001, by which the Complainant was ordered to pay to the accused damages in the sum of Rs.12,000/- and costs.

5. There were also three other Civil Suits filed by the Complainant against the accused bearing nos. 104/102, 17/03 and 64/03. The said three Civil Suits came up for hearing before 'C' Court at Panaji, on 26.03.2004. When the said three Civil Suits were called out for hearing, it is the case of the Complainant that the accused said that “applicant is the most corrupt man in this City” and then continued saying the things which the accused subsequently reproduced in Para 2(c) of the Written Statement dated 08.07.2004, in Civil Suit No. 37/04/C. This complaint came to be filed by the Complainant on or about 20.07.2004.

6. However, the Complainant prior to presenting the complaint on 20.07.2004, filed against the accused a Civil Suit bearing no. 37/04/C. The said Civil Suit was filed with the allegation that the accused as a defendant had said that “plaintiff is the most corrupt man in this City”, which had no connection with the purpose for which the suit had been called. The said Civil Suit was filed on 31.03.2004. Obviously, there was no whisper in the said Civil Suit to what the accused is said to have narrated on 26.03.2004, when the said Civil Suits were called for hearing before the 'C' Court at Panaji, for, what the accused is said to have narrated, appeared only in the written statement filed by him on 08.07.2004. There is no dispute that the plaint in RCS no. 37/04/C was rejected by the learned Civil Judge, Junior Division, Panaji, by Order dated 31.12.2004 and the said Order has attained finality.

7. After the said written statement was filed by the accused as defendant in the said Civil Suit no. 37/04/C, the Complainant filed the present complaint on 20.07.2004 by reproducing what the accused had stated in his written statement in Para 2(c) thereof, which reads as follows :

> (c) On 26.3.04 the Defendant just recollected very briefly that in 1963 when the Defendant was the Govt. Advocate (“Delegado do Ministerio Publico”) in the Civil and Criminal sides in this then “Comarca” or Judicial Division of Ilhas at Panjim, he was prosecuting a Criminal case against the “Firma Bento Minguel Fernandes”,

near the Hon'ble Court, on the same road, for an economic offence of profiteering (selling foreign whisky for price higher than that fixed by the Directorate of Economy at the time under the economic laws). The plaintiff worked in said Firm as an Accountant. One fine day in the morning, after asking leave from the then Court Clerk, Mr. Arnaldo Anes and of the Defendant when he was alone in his Chamber in this same Court Bldg., the plaintiff entered bare-footed as he was walking in Public at that time, into the Chamber and tried to corrupt Defendant as Investigating Govt. Advocate, offering him apparently some currency Notes in a plastic enclosure, stating that the Defendant must be tired with work and the said Firm Bento Miguel Fernandes would like to help the Defendant in his job. The Defendant reacted immediately and calling the Delegation Clerk Anes forthwith, told the Plaintiff that he "Delegado" of the Attorney General, Govt. Advocate could at once get him arrested by the Police and send him for trial for an offence of corruption/attempted corruption of a Public Authority (under the then Port. Penal Code, 1886 in force upto 31.10.1963). However taking into account his young age and that he was also studying law and helping the well known Panjim Advocate, Rui Gomes Pereira, Colleague of the Defendant, the Defendant was using of mercy and setting the Plaintiff free, with a stern warning to keep his or his master's money and not to repeat

ever such “feat” and to conduct himself as a good Citizen. Of course, the offence of profiteering or speculation was charged by the Defendant in proceeding of “Policia Correccional” under the then Law (Portuguese Cr.P. Code, 1929) against the Manager of the Firm, Bento Miguel Fernandes and tried in due course by the Hon'ble Judge of this Court.

8. As far as the said incident narrated by the accused on 26.03.2004, before 'C' Court, when the three suits filed by the plaintiff were called out for hearing and, subsequently, reproduced in Para 2(c) of the written statement filed by the accused on 08.07.2004 , is concerned, the same did not form part of the Civil Suit of RCS no. 37/04/C. The plaintiff submits that the said narration made by the accused on 26.03.2004 and subsequently reproduced in Para 2(c) of the written statement dated 08.07.2004, has been referred to by the Complainant in Para 7 of the plaint. However, this submission cannot be accepted for Para 7 only refers to remarks in a row, having been made by the accused.

9. RCS no. 37/04/C, the plaint of which was rejected by order dated 31.12.2004, was filed on the allegation that the accused had said “plaintiff is the most corrupt man in this City, which had no connection with the purpose for which the suit had been called”. The Complaint was filed on the allegation that the accused had said “the applicant is the most corrupt man in this City” and

that thereafter the accused has continued saying things which the accused reproduced in Para 2 (c) of the said written statement dated 08.07.2004 in RCS no. 37/04/C. The Complainant in his statement on oath recorded on 29.11.2005 and thereafter stated that after RCS no. 37/04/C was adjourned on 26.03.2004, the accused had said that he was the most corrupt man before all the lawyers, all the litigants, who were present in the Court and defamed his name in public and in the eyes of the public.

10. Admittedly, the Complainant did not examine any of the lawyers who were present in Court. The Complainant also stated in his said statement dated 29.11.2005, that on account of the scandalous remark made by the accused in the Open Court, his image was lowered in front of the Public. At the cost of repetition it must be stated that the Complainant did not examine any of the persons present when the accused allegedly made the said imputation.

11. The learned Additional Sessions Judge observed that if the scandalous attack of calling the “respondent/Complainant as the most corrupt man in the City” had taken place in the presence of the Magistrate, same could have been dealt with by the Magistrate under Section 228 of Cr.P.C. at least for causing interruption to a public servant while judicial proceedings were on, if really such incident took place. As per the learned Sessions Judge, the essence of the offence of defamation as given in Section 499 of I.P.C. , is that imputation must have been made either with the intention of causing harm or

knowing or having reason to believe that such an imputation would cause harm to the person and that same requires publicity to be given to the imputation. However, such evidence is totally missing in the complaint. The Complainant/Respondent in his complaint did not whisper in what respect alleged word had lowered him in the esteem of advocate or litigants or the public in general. In fact, there are absolutely no averments in the complaint to that effect. As per the learned Additional Sessions Judge, the Complainant did not mention in the complaint the names of any of the lawyers or litigants who were present nor did he examine them to corroborate the statement made by him in his verification of the complaint and further observed that there could be no defamation unless a defamatory statement was passed or circulated or communicated to the third party, i.e. to a party other than the party defamed or that there was no averment either in the complaint, statement or in the verification of the Complainant to that effect and that the bare perusal of the complaint did not indicate how and in what manner the Complainant was defamed by the accused and, therefore, proceeded to allow the revision filed by the accused and quashed the process issued against the accused.

12. The Complainant submits that the learned Additional Sessions Judge has not at all considered the documents produced by the Complainant. The Complainant submits that the learned Additional Sessions Judge did not consider the narration of the defamatory statement which was narrated by the accused and which was reproduced in Para 3 of the written statement of the

accused dated 08.07.2004 in RCS no. 37/04/C. As far as this incident is concerned, learned Advocate Ms. Colaso submits that the said statement has got to be read as a whole with other parts of the written statement filed by the accused and that it has no connection with the imputation alleged to have been made by the accused and based on which the RCS no. 37/04/C was filed and which was also the basis of the complaint. Learned Counsel also submits that there is variance as to what the Complainant stated in the complaint and his statement on oath. It is also submitted that the Complainant is hard of hearing and as far as this statement of fact is concerned, it can be seen that this fact was also pleaded by the accused in Para 2(b) of the said written statement dated 08.07.2004 and again has been reiterated by the accused in his reply cum affidavit filed before this Court on 13.02.2007.

13. As far as the incident which took place between the Complainant and the accused years back in 1963 is concerned and which is the subject matter of narration by accused on 26.03.2004 and subsequent reproduction in Para 2(c) of written statement, the Complainant has admitted having gone to the accused with money on behalf of the firm Bento Miguel Fernandes, but according to the Complainant, the accused accepted the said money but as far as the Complainant is concerned, the accused only warned the Complainant that he should not repeat such thing again and should conduct himself as a good citizen. As far as the said incident is concerned, narrated by the accused and reproduced by the accused in Para 2(c) of the written statement dated

08.07.2004, it must be immediately stated that the same was not the basis on which RCS no. 37/04/C was filed or for that matter, the complaint was filed from which the present revision has arisen. As can be seen from the complaint, the basis of the same was that the accused had said “applicant is the most corrupt man in this City” and then had continued the said narration. The statement on oath made by the Complainant disclose that the accused had stated “he was the most corrupt man” while that in the RCS no. 37/04/C was that the accused had stated “plaintiff is the most corrupt man in this City”. Whether the Complainant had heard it right, what the accused had stated, is a matter of doubt, the Complainant having not examined any witness to support the said allegation nor had examined any witness to support his contention that any imputation was made which imputation had directly or indirectly had lowered his reputation in the estimation of others. That was absolutely necessary. The essence of offence of defamation is the harm caused to the reputation of a person. Character is what a person actually is and reputation is what neighbours and others say he is. In other words, reputation is a composite hearsay and which is in the opinion of the community against a person. Everyone is entitled to have a very high estimate of himself but reputation is the estimation in which the person is holding by others.

14. In the light of inconsistencies found in the imputation, as reproduced by the Complainant at different times, looked in the background of the allegation of the accused that the Complainant is hard of hearing and in the

absence of the Complainant having examined any witness to support the alleged imputation that it was made by the accused, it could not be said that the Complainant had made out a prima facie case for issuance of process and, therefore, there was no question of the learned Magistrate having issued any process against the accused.

15. In the facts and circumstances of the case, the conclusion arrived at by the learned Sessions Judge, could not be faulted. Hence, this Criminal Revision Application is hereby dismissed.

N. A. BRITTO, J.

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